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CRIMINAL BACKGROUND CHECK - PERSONAL AND FISCAL

I. PURPOSE

It shall be the purpose of this policy to ensure the integrity of the Department's financial and personnel fiduciary job functions by requiring employees who are appointed to such classifications to have their criminal history checked prior to employment and/or during a conditional period of employment.

II. POLICY

A. Department Responsibilities

The Department has the responsibility to ensure the integrity of its financial and personnel fiduciary job functions. As such, the Department shall require a criminal history review on all prospective employees by the processing of fingerprints to the State Bureau of Identification and Federal Bureau of Identification to determine if a criminal history exists. The cost of the fingerprinting process shall be borne by the Department. The results of any criminal history will be shared by the Department Criminal History Specialist with the respective Division Director, the employee or prospective employee, and the Department Personnel Office.

If it is determined through a criminal history check, or disclosed subsequent to a criminal history check, that an employee or prospective employee has been convicted of a criminal offense covered under the Prohibited Offenses section of this policy, he/she shall be terminated or not hired as applicable. A conviction(s) of a

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criminal offense, other than a Prohibited Offense, shall be reviewed and regulated by the unsuitability section of this policy.

B. Employee Responsibilities

The criminal history review is considered part of the employment application process. As such, any misrepresentation or falsification of information may result in the rejection of the application, removal from the applicant register, dismissal and disqualification of future applications (Merit Rule).

If an employee subsequent to a successful criminal history review, or who was employed prior to the effective date of this policy and not subject to a criminal history review, becomes convicted of a criminal offense while occupying a fiduciary job function, he/she shall be terminated, if applicable, or reviewed for an unsuitability determination. Failure of an employee to notify the Department of any conviction may be grounds for termination.

C. Change of Position/Function through Intra-Departmental Movement

Employee movement between positions within the Department with respect to the criminal history review will be regulated by applicable Departmental policy.

Direct service and other staff who previously had a successful criminal history review under another Departmental policy shall not be required to be fingerprinted again when changing positions/functions under the provisions of this policy. Their previous criminal history check will be reviewed for its applicability to the offenses embodied within this policy. Should the employee possess a conviction of a Prohibited Offense as defined within this

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policy, or determined unsuitable for the position, such movement to the fiduciary job function shall not be effected.

Employees who have never served in a position/function within the Department requiring a criminal history check who move to a position/function covered by this policy must be processed for a criminal history review. Any probationary period associated with this intra-department movement shall be adjusted to accommodate the receipt of the criminal history review. An unsuccessful criminal history review will require reversion to their former position/function.

Such reversion shall be guided by the applicable merit rules governing probation after promotion, transfers, demotion, or applicable collective bargaining agreement.

D. Conditional Employment

Upon an initial appointment to an affected classification within the Department (other than intra-departmental movement), the Department may allow a prospective employee to commence work prior to the results of the criminal history check. Continued employment is contingent upon the satisfactory results of the criminal history check. An unsatisfactory criminal history review may require termination or in the case of inter-departmental movement, a reversion to the employees former position. Such reversion shall be guided by the applicable merit rules governing probation after promotion, transfers, or demotion. The Department Personnel Office will notify an employee of this condition at the time of hire. Any probationary period associated with the initial appointment shall be adjusted to accommodate the receipt of the criminal history review.

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E. Notification Procedure

When the information is received by the Department from the State Bureau of Identification, the Federal Bureau of Identification and other applicable sources, the information will be reviewed, a decision made, and the results forwarded to the employee.

F. Administrative Review

In any case where an employee or prospective employee believes the criminal history is incorrect or incomplete, she/he has the opportunity to request a review of the facts of the criminal history check within 5 working days of receipt of the Division's employment decision. If the employee or prospective employee believes that additional information regarding the circumstances would clarify the situation, she/he has the opportunity to request a review within 10 working days of receipt of the Division's employment decision.

III. DEFINITIONS

A. Conditional Employment means a period of time upon initial appointment to an affected classification within the Department (other than intra-departmental movement) whereby employment and/or continued employment is contingent upon the satisfactory results of the criminal history record check.

B. Criminal History Review means a process by which an employee or prospective employee is fingerprinted for processing to the State Bureau of Identification and the Federal Bureau of

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Identification to determine if a criminal history exists. An internal Departmental review ensues upon receipt of the results as outlined herein.

- C. Criminal History Specialist means the Department staff member who is responsible for processing and reviewing criminal background information consistent with Departmental policies and procedures.
- D. Department means the Department of Services for Children, Youth and Their Families.
- E. Employee means any individual occupying a classification, either merit or non-merit, within the Department.
- F. Fiduciary Function means any function by job description, as delineated herein, for which the Department has delegated honesty and trust to respective incumbents. Typical functions would include, but are not limited to, the handling and/or dispensing of Departmental funds, the preparation and processing of source documents authorizing and effecting expenditures, inclusive of electronic approvals, and the reconciliation of any financial account.
- G. Prohibited Offense means any criminal offense (misdemeanor or felony) as delineated in Section V of this policy for which an individual has been convicted.
- H. Prospective Employee means an individual who has been offered and accepted an appointment to a position either merit or non-merit, within the Department and has not yet commenced work.

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- I. Unsuitability means a discretionary determination based upon established criteria made by a Division Director, that as a result of the criminal history review the employee/prospective employee possesses a criminal conviction (other than prohibited) which renders the individual unsuitable for employment or continued employment in the fiduciary job function.

IV. **INDIVIDUALS SUBJECT TO THE POLICY**

Upon the effective date of this policy any individual appointed to a classification listed shall have a criminal history check completed. This also applies to any appointment to a non-merit comparable classification (i.e. exempt, seasonal, temporary etc.). Any classification not listed whose function, either in whole or in part, satisfies the definition of a fiduciary job shall also be subject to the provisions of this policy. Such a determination will be made by the respective Division Director in consultation with the Department Personnel Office.

- A. Administrative Assistant I & II
- B. Personnel Technician
- C. Account Technician
- D. Patient Benefit Determination Specialist
- E. Administrative Officer
- F. Management Analyst I, II, III
- G. Fiscal Management Analyst
- H. Personnel Officer II
- I. Personnel Officer III
- J. Personnel Administrator II
- K. Accountant II
- L. Senior Accountant
- M. Fiscal Administrative Officer
- N. Controller

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- O. Support Services Administrator
- P. Quality Assurance Analyst
- Q. Payroll Supervisor
- R. Payroll Technician
- S. Cost Recovery Administrator
- T. Deputy Principal Assistants
- U. Division Directors
- V. Cabinet Secretary

Due to the potential for reclassification during the life of this policy, successor classifications or newly established positions are also included without the necessity for a policy revision.

V. **PROHIBITED OFFENSES**

Employees and prospective employees who have been convicted of a prohibited offense(s) shall be terminated or prohibited from employment, as applicable. Prohibited offenses shall include:

- A. Forgery
- B. Falsifying business records
- C. Tampering with public records - 2nd and 1st degree
- D. Securing execution of documents by deception

II. **CRITERIA FOR UNSUITABILITY**

An employee/prospective employee may be terminated or not appointed to a position, as applicable, if as a result of the criminal history review, or subsequent disclosure, it is determined that they possess a criminal conviction (other than a Prohibited Offense) which renders them unsuitable for employment in a fiduciary job function.

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Upon receipt of the summary findings from the Criminal History Specialist, or a subsequent disclosure, the respective Division Director shall confer with the Department Personnel Office in making the determination regarding employment or continued employment. Such a determination shall be made utilizing the following criteria:

- A. Job Relatedness - the conviction(s) must be specifically related to the prospective fiduciary job function and may jeopardize the integrity of the function. If job related, the review shall also consider:
 - 1. Severity of the offense(s)
 - 2. Nature of offense(s); in particular, whether the offense(s) fall within the universal definition of embezzlement as defined in a standard dictionary.
 - 3. Frequency of offenses; interval between offenses
 - 4. Length of time since the offense(s)
 - 5. Age at the time of the offense(s)
- B. Employment record, if applicable
- C. Policies of the Department

II. **PROCEDURES**

The Department shall require each individual subject to the policy to complete a Criminal History Record Request form and be fingerprinted, either as soon as the individual has accepted a position or no later than the fifth working day. The employee's immediate supervisor shall ensure that this is accomplished.

On or before sign-up, the Personnel Office will forward the YELLOW copy of the Criminal History Record Request form to the

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Department Criminal History Specialist and will file the PINK copy in the employee's personnel file.

The employee takes the WHITE copy of the form to a designated Delaware State Police barrack and has two sets of fingerprints taken. The WHITE copy is attached by the trooper to the fingerprint cards.

Note: Should a revision(s) to the Criminal History Record Request form be developed subsequent to this policy, the Department shall be guided by the prevailing instructions for completion.

The results of the State Bureau of Identification and Federal Bureau of Identification checks will be sent to the Criminal History Specialist as they are completed.

When the Criminal History Specialist receives the information from the SBI and FBI, she/he reviews the information along with the Criminal History Record Request form in order to prepare a report of the findings for the appropriate Division Director. If there is a need for clarification of some of the information, the Criminal History Specialist will contact the employee. In some instances, clarification may also be obtained from the court system and/or appropriate criminal justice personnel. Results of the review are maintained in the employee's criminal history background check file.

When there is no record, the Criminal History Specialist reports this information to the appropriate Division Director. The Division Director sends notification to the employee and copies the Criminal History Specialist and Personnel Office.

When there is a criminal history, the Criminal History Specialist prepares a summary of the findings of the check and a recommendation as

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to the applicability of the conviction(s) to the Prohibited Offenses embodied within this policy for the appropriate Division Director.

The Criminal History Specialist will not be required to provide a recommendation on a conviction(s) other than a Prohibited Offense when forwarding the summary. The Division Director sends notification to the employee with a copy of the findings and copies the Personnel Office and Criminal History Specialist.

If the findings indicate a conviction(s) of a Prohibited Offense, the Division Director in conjunction with the Personnel Office, will devise a notification letter to the employee incorporating the findings. The content of such notification will be particular to the employment status of the individual. This process will also apply to a determination of unsuitability.

When applicable, the notification will represent a recommendation to the Cabinet Secretary that the individual be terminated. A copy of this notification will be provided to the Criminal History Specialist.

VI. **ADMINISTRATIVE REVIEW**

An employee or prospective employee will be notified of the right to an administrative review when a determination has been made to terminate/deny employment or to deny intra-department movement.

In the event that the affected individual feels that the criminal history information is incorrect or incomplete, she/he must file a written request with the Criminal History Specialist (with a copy to the Division Director) for a review of the facts of the criminal history within 5 working days of receipt of Division's notification. The individual should also make application for correct information to the State Police. When the corrected information is obtained by the individual it should be forwarded to the

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Criminal History Specialist for review by the Criminal History Specialist's Supervisor or the Division of Program Support Director and the Criminal History Specialist. The Criminal History Specialist will issue a report/recommendation based on the corrected information.

If, on the other hand, the affected individual believes that additional information regarding the circumstances of the particular offense(s) would clarify the situation, she/he must submit a written request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with copies to the Criminal History Specialist. This must be submitted within 10 working days from the date of receipt of the Division's notification. The individual may also request to give an oral presentation at such review.

Upon receipt of a request for an administrative review under this section, the Division Director (or designee) shall conduct the review in conjunction with the Department Personnel Office within the context of this policy, merit rules/labor agreements and the employment status of the individual. The Criminal History Specialist shall be present as a witness.

The results of any administrative review shall be provided to the affected individual in writing within 15 working days from the date of the review by the Division Director or Criminal History Specialist, as applicable. Copies shall be provided to the Department Personnel Office.

VII. CONFIDENTIALITY

The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment. The Criminal History Specialist shall ensure confidentiality of all files of criminal history checks and the administrative review process.

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